

Public Procurement Regulations

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“Relevant Authority” means —

- (a) in relation to a public procurement of a minor value, the accounting officer;
- (b) in relation to a public procurement of an intermediate value, the Public Procurement Committee;
- (c) in relation to a public procurement of a major value, the Board;

“Request for proposals” includes a document attached to, or incorporated by reference in, a request for proposal;

“Request for quotations” includes a document attached to, or incorporated by reference in, the request for quotations;

“responsive”, in relation to a tender or proposal, means —

- (a) the tenderer fulfils the requirements of regulation 61;
- (b) the tender complies with the terms and conditions set out in the tender document; and
- (c) the tender adequately addresses to the technical specifications detailed in the tender document;

“written” or “in writing” means to communicate or notify of information via letter or notice in hard copy or electronic form.

**PART 2
ADMINISTRATION**

Use of Electronic Procurement Systems

3. For the purposes of section 5(2) of the Act, a procuring entity must obtain prior approval for the use of an electronic procurement system.

Audits by the Director

4.—(1) For the purposes of section 6(1)(c) of the Act, the Director may carry out an audit —

- (a) on his or her own initiative; or

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- (b) where the or she has reasonable grounds to suspect that a procurement **proceedings** has been conducted in breach of the Act.

(2) The Director shall, subject to such conditions as the Director considers necessary, by instrument in writing, appoint a suitably qualified individual to conduct an audit under subregulation (1).

(3) Nothing in this Part shall be construed to limit, reduce or restrict the authority of the Director of Audit to conduct any inspection under the Act or any enactment.

Functions of Auditor engaged by the Director

5. An **Auditor** appointed under regulation 4(2) —

- (a) shall have access to all books, records, returns, reports and other documents of a procuring entity or a person who participated in the procurement proceedings, including documents kept and maintained by electronic means;
- (b) may remove or make copies of any document to which the auditor has access under paragraph (a);
- (c) may require an employee or official of a procuring entity or a person who participated in the proceedings to provide such explanations, information or assistance as the auditor considers necessary for the conduct of the audit; and
- (d) shall perform such other functions specified in the instrument of appointment.

Report of the Auditor

6. The Auditor shall, on completion of the audit, prepare and submit to the Director a report on the audit.

Actions arising out of the Audit Report

7.—(1) Where, after considering the report of the Auditor under regulation 6, the Director is satisfied that there has been a breach of the Act, **these Regulations or any authorised directions** regarding

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procurement proceedings, the Director may, subject to subregulations (2) and (3) —

- (a) direct the procuring entity to take such actions as are necessary to rectify the breach;
- (b) prepare and submit a summary of the auditor's findings and recommendations to —
 - (i) the procuring entity and the Board,
 - (ii) the Attorney General, and
 - (iii) where applicable, the relevant Service Commission.

(2) Before performing an action under subsection (1), the Director shall give an opportunity to make representations in relation to the intended exercise of that power to —

- (a) the procuring entity; and
- (b) any other person whose legal rights may be adversely affected by the action.

(3) The Director shall take the representations under subregulation (2) into account in deciding whether to perform an action under subregulation (1).

Transfer of public procurement responsibilities

8. The Director, may, after consultation with the relevant procuring entities, by written agreement, authorize a procuring entity to perform the functions of a Public Procurement Unit or a Public Procurement Committee on behalf of another procuring entity where that procuring entity does not perform sufficient procurement in any given financial year or has insufficient personnel to warrant the establishment of a public procurement unit and or public procurement committee.

The Public Procurement Unit

9. For the purposes of section 10(1) of the Act, an accounting officer may designate, in writing, one or more suitable public officers to perform the functions of the Public Procurement Unit under section 9 of the Act.

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Operations of the Central Procurement Board

10.—(1) Subject to subregulation (2) and for the purposes of section 13 of the Act, a procuring entity shall, in writing, submit to the Board such information in relation to public procurement proceedings that the Board requires.

(2) Without limiting the generality of subregulation (1) —

- (a) the Board shall, specify the means and procedure by which a procuring entity must provide information; and
- (b) the procuring entity shall submit the information to the Board within fourteen days of receipt of a request from the Board or within such extended period of time as may be agreed.

(3) The Board may issue to a procuring entity, a copy of the internal procedures established by the Board under section 12(1)(a) of the Act to aid the compliance of the procuring entity.

Functions and powers of a public procurement committee

11. (1) For greater certainty, a public procurement committee as appointed in section 23 of the Act —

(2) The chairperson of the public procurement committee shall—

- (a) convene meetings of the public procurement committee according to the needs of the procuring entity; and
- (b) ensure that proper minutes of such meetings and records of procurements made or approved by the public procurement committee are kept .

(3) The quorum of a meeting of the public procurement committee shall be a majority of the members .

(4) The chairperson shall —

(a) Quarterly, send or cause to be sent to the Director —

- (i) a list of all contracts awarded by the public procurement committee,

- (ii) a list of all procurements involving variations which exceed the original contract values by more than [5 per cent], and

- (iii) details of each contract including the nature of the contract, the original contract values and the final contract values; and

(5) The report shall include —

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- (a) the value, estimated if necessary, of the consideration payable under the contract;
- (b) the procurement procedure which the public procurement committee used;
- (d) the principal category of goods, services and works procured; and
- (6) Director shall/may provide a template for the required report.

Procurement by a Procurement Committee.

12. (1) Except as provided otherwise in the Act and these Regulations or in any special circumstances authorised by the Director, a public procurement committee shall authorize the procurement of goods, services and works of intermediate value by means of the competitive tendering procedure.

(2) For greater certainty, a public procurement committee may —

- (a) accept any tender or a portion of any tender,
- (b) reject all or any tender;
- (c) where all tenders have been rejected, advise that —
 - (i) new tenders be issued, or
 - (ii) the department makes other arrangements to obtain the goods, service or works.

(3) The procurement committee shall ensure that —

(a) tenderers are instructed to submit their tenders to the chairperson of the public procurement committee specified in the invitation for tenders, in sealed envelopes clearly and distinctly marked “[tenders for [insert particulars of tender] and the invitation number]”;

(b) the deadline for the submission of tenders to the public procurement committee are stated in the invitations for tender;

(c) immediately upon receipt, the envelopes containing the tenders are stamped with an official stamp and initialled by the secretary of the public procurement committee;

(d) the envelopes containing any tenders received after the deadline for submission of tenders are clearly marked to that effect by the secretary of the public procurement committee;

(f) no tender is opened before the deadline for submission of tenders;

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(g) tenders received after the deadline for submission of tender shall not be opened.

(h) the tenders are opened at the meeting of the public procurement committee convened to consider the tenders;

(i) the tenders, when opened, are numbered consecutively and initialled by the chairperson of the public procurement committee;

(k) the relevant details of the tenders received are recorded in the minutes of the meeting of the public procurement committee considering the tenders;

(j) until the public procurement committee makes a decision regarding the award of a contract, the contents of the tenders are communicated only to the officers responsible for dealing with them;

(l) in the case of the complex procurements, technical officers are present or called upon to advise the public procurement committee on any aspect of the tenders under consideration;

Bulk Public Procurement

13. (1) A procuring entity shall identify its requirements for items included on the list as per 55(2) of the Act and submit a request for these requirements. The request shall —

(a) if possible, be submitted along with the annual procurement plan or at least three months before the goods, services or as the case may be, the works are needed; and

(b) contain full details of the requirements and recommendations of the accounting officer respecting the manner and procedure for procuring the goods, services or works.

**PART 2
PROCUREMENT PROCEEDINGS**

Publication of Advertisements

14. (1) A procuring entity —

(a) shall Publish an advertisement for procurement opportunities —

(i) in the *Gazette* and

(b) may also publish on the website of the procuring entity or the Government, and any chosen print media

(2) Every procuring entity shall make provision for the payment,

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out of the vote provided for advertisement and announcement under the control of the procuring entity, the cost of advertisement or announcements incurred in respect of the procurement of —

- (a) goods, works or services supplied to the procuring entity; or
- (b) undertakings taken for the procuring entity.

(4) Except as provided in the Act and these Regulations no communication shall take place between procuring entities and any supplier or contractor in respect of a procurement opportunity after the publication of the procurement opportunity.

Advertisement of Procurement Opportunities

15. Pursuant to section 9(2)(e) of the Act, a procuring entity shall prepare advertisements informing of procurement opportunities containing:

- (a) the name and contact information of the procuring entity
- (b) the nature of the required procurement;
- (c) the manner in which the procurement documents can be obtained; and
- (d) the deadline for receipt of submission.

Standard tender document

16. (2) Where Director issues standard tender document pursuant to Article 5(1)(c) , ...a procuring entity shall —

- (a) use the relevant standard tendering documents relating to the particular procurement procedure; and
- (b) immediately after the publication of the invitation for tenders, provide a set of tendering documents to any supplier or contractor, on request.

(3) Where goods, services or works are procured by means of the open competitive tendering procedure, the tendering documents shall include —

- (a) the invitation for tenders;
- (b) the instructions to tenderers;
- (c) the form of tender;
- (d) the form of contract;
- (e) the general or special conditions of contract;
- (f) where applicable, the specifications and drawings or

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performance criteria;

- (g) where applicable, the list of goods or bill of quantities;
- (h) the delivery time or completion schedule;
- (i) where applicable, the qualification criteria for the award of the contract;
- (j) the tender evaluation criteria;
- (k) where applicable, format of all securities required;
- (l) the details of standards (if any) that are to be used in assessing the quality of goods, works or services specified; and
- (m) any other detail not inconsistent with the Act which the procuring entity considers necessary.

(4) Where, after the invitation for tenders or the issue of the tendering documents to prospective tenderers, any information becomes necessary for the preparation of tenders or for the evaluation of tenders, the procuring entity shall —

(a) in a timely manner and on an equal opportunity basis, provide such information to the prospective tenderers to whom tendering documents were issued; and

(b) in the same manner as the original advertisement, notify such tenderers of any change, addition, modification or deletion which becomes essential to be made to the tendering documents.

(5) Notwithstanding this regulation, a procuring entity may continue to use tendering documents already in the use of the procuring entity —

(a) to the extent that such tendering documents are not inconsistent with these Regulations, and

(b) until such tendering documents are replaced by the standard tendering documents.

Availability of Tender document

17. (1) Subject to sub-regulations (2), and (3), the Procurement Officer shall, on request by a person, furnish a copy of the tendering documents and supporting documents in respect of any notice of an invitation for tenders, request for proposals or invitation to prequalify which is issued.

(2) Subject to sub-regulation (3), a fee is chargeable if before the issue of a notice respecting a procurement opportunity, the Procurement Officer, after consultation with the Director, determines that it is in the public interest to charge a fee for reproducing and

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supplying a copy of the relevant tendering documents and supporting documents.

(3) Where a fee is charged, the fee shall not exceed the reasonable costs of reproducing and supplying a copy of tendering documents and supporting documents.

Tender Deadline

18. (2) The deadline for the submission of tenders under s. 66 of the Act shall be calculated from the date of first publication of the invitation to tender

(3) In calculating the submission deadline, the procuring entity shall take account of the particular circumstances of the procurement, its magnitude and complexity of the procurement.

CONSULTANCY SERVICES

Methods of Selection of consultants

19. (1) Pursuant to section 49 of the Act, the procuring entity shall select the appropriate method of selection for consultancy services having regard to —

- (a) the nature, size and complexity of the assignment;
- (b) the likely impact of the assignment respecting the assignment;
- (c) technical and financial considerations; and

(2) The selection methods for consultancy service are —

- (a) quality and cost-based selection;
- (b) quality based selection;
- (c) technical proposal-based selection;
- (d) fixed budget selection;
- (e) least cost selection; and
- (f) individual consultant.

Selection Based on Quality and cost

20. (1) A procuring entity which intends to use the quality and cost-based selection method shall comply with this regulation.

(2) A quality and cost-based selection method is based on—

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- (a) the quality of the proposals; and
- (b) the cost of the services to be provided.
- (3) The procuring entity shall use the quality and cost-based selection method where —
 - (a) the procuring entity can —
 - (i) precisely define the scope of work of the assignment, and
 - (ii) clearly and unambiguously specify the terms of reference respecting the work; or
 - (b) the procuring entity and the consultants can estimate with reasonable accuracy and precision —
 - (i) the staff time and the other inputs, and
 - (ii) related costs.
- (4) Without prejudice to sub-regulation (3), the quality and cost-based selection method is appropriate for assignments such as —
 - (a) feasibility studies and designs where —
 - (i) the nature of the investment is clear and well defined;
 - (ii) known technical solutions are being considered, and
 - (iii) the evaluation of the impacts from the project is not uncertain or too difficult to estimate;
 - (b) the preparation of detailed designs;
 - (c) supervision of construction of works and installation of equipment;
 - (d) technical assistance services and institutional development; and
 - (e) procurement and inspection services.
- (5) A request for proposals under the quality and cost-based selection method may indicate the estimated staff time required by the procuring entity to carry out the assignment, but such estimated staff time shall not bind the consultants who may propose the level of inputs which they consider appropriate.
- (6) Subject to subregulations (7) and (8), the interested consultants shall submit the technical and financial proposals using the one stage two envelope tendering process set out in regulation 69.
- (7) The relevant authority shall, immediately after the closing time for submission of proposals —

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(a) open the envelopes containing the technical proposal;
 (b) keep the financial proposals sealed until the completion of evaluation of technical proposals and the report respecting the evaluation; and

(c) upon completion evaluation of technical proposals and the report respecting the evaluation, disclose in public the technical scores simultaneously to the consultants who submitted proposals.

(8) The relevant authority shall, after the disclosure of the technical scores under sub-regulation (7)(c) —

(a) evaluate the financial proposal of every consultant who submitted a responsive technical proposal which attains the minimum qualifying mark;

(b) compute the combined evaluation score of the technical and financial proposals of each consultant by weighting and adding the quality and the cost scores; and

(c) invite the consultant who obtains the highest combined score for negotiations, except with respect to staff rates and other unit rates.

Selection based on Quality

21. (1) A procuring entity which intends to use a quality-based selection method shall comply with this regulation.

(2) A quality-based selection method is appropriate where —

(a) the downstream impact of the assignment is so large that the quality of the services becomes of overriding importance for the successful outcome of the project;

(b) the scope of work of the assignment and the terms of reference are difficult to define because of —

(i) the novelty or complexity of the assignment,

(ii) the need to select among innovative solutions, and

(iii) particular physical conditions;

(c) the assignment can be carried out in substantially different ways, so that cost proposals may not easily be comparable; and

(d) the introduction of cost as a factor of selection renders competition unfair.

(3) The quality-based selection method is based on —

(a) an evaluation of the quality of the proposals; and

(b) the subsequent negotiation of the financial proposals.

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(4) The procuring entity shall award the procurement contract to the consultant who submits the highest ranked evaluated responsive technical proposal.

Selection based on Technical proposal

22. (1) Where a procuring entity intends to use the technical proposal-based selection method, the procuring entity shall —

(a) comply with this regulation; and
 (b) specify in the request for proposals its estimate of the staff-months required for the assignment.

(2) The relevant authority shall —

(a) base the technical proposal-based selection on its evaluation of the technical proposals of the proposed contractors only; and

(b) upon completion of the evaluation of the technical proposal, invite the consultant with the highest-ranking evaluated responsive technical proposal to present its financial proposal.

(3) Where the procuring entity requests consultants to submit the financial proposals at the same time as the technical proposals —

(a) the consultants shall submit the financial proposal and the technical proposal in separate envelopes; and

(b) the relevant authority shall —
 (i) keep the financial proposals secured until the completion of the evaluation of the technical proposal,

(ii) only open the financial proposal of the consultant with the highest-ranking technical proposal, and

(iii) subject to successful conclusion of negotiations with such consultant, return to the unsuccessful consultants their unopened financial proposals.

Selection based on Fixed budget

23. (1) A procuring entity may select consultants for the award of contracts under a fixed budget selection method if —

(a) the budget in respect of the consultancy services is fixed and cannot be exceeded; or

(b) the procuring entity can precisely assess the time and staff-month effort required from the consultants.

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(2) Without prejudice to sub-regulation (1), a procuring entity shall use the fixed budget selection method for well-defined and simple assignments with a low financial risk for the consultants including —

(a) sector studies, market studies and surveys of limited scope;

(b) simple pre-feasibility studies and review of existing feasibility studies;

(c) review of existing technical designs and tendering documents; and

(d) project identification for which the level of detail can be matched with the available funds.

(3) The procuring entity shall, for the purpose of permitting consultants to present clear and responsive proposals, ensure that the terms of reference in respect of the assignment —

(a) are consistent with the established budget; and

(b) contain a well-specified scope of work.

(4) For the purpose of awarding a contract under the fixed budget selection method, the procuring entity shall —

(a) ensure that the budget is compatible with the terms of reference;

(b) ensure that consultants will be able to perform the tasks within the budget;

(c) disclose the available budget to selected consultants in the request for proposals; and

(d) invite prospective contractors to submit their technical and financial proposals in separate envelopes.

(5) Where a proposal does not cover any minor technical aspects set out in the terms of reference, the evaluated price of that proposal shall be calculated by adding to the offered price, the estimated cost of the missing minor technical aspects.

(6) The relevant authority shall —

(a) reject every proposal which exceeds the indicated budget after adjustments and corrections; and

(b) select the consultant who submits the highest ranked evaluated responsive technical proposal.

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Least cost selection

24. (1) A procuring entity may use the least cost selection method for small assignments of a standard or routine nature —

- (a) where well-established practices and standards exist;
- (b) from which a specific and well-defined outcome may be expected; and
- (c) which can be executed at different costs.

(2) The practices, standards, outcomes and costs referred to in sub-regulation (1) include —

- (a) standard accounting audits;
- (b) engineering designs or supervision of simple projects;
- (c) repetitive operations, maintenance work and routine inspections; and
- (d) simple surveys.

(3) For the purposes of this regulation, the procuring entity shall —

(a) subject to paragraphs (b) and (c), establish a minimum qualifying mark for quality

(b) indicate the minimum qualifying mark in the request for proposals; and

(c) set the minimum qualifying mark at approximately seventy-five to eighty per cent —

- (i) to ensure quality, and
- (ii) to avoid the risk of selecting low-cost proposals of poor or marginally acceptable quality.

(4) The procuring entity shall —

(a) invite consultants who have been selected from a list of pre-qualified consultants to submit their proposals;

(b) reject every proposal which attains a score which is less than the minimum technical qualifying mark; and

(c) for the purpose of awarding the contract, select the consultant with the lowest evaluated substantially responsive price.

Individual consultants

25. (1) A procuring entity may engage an individual consultant on contracts referred to in sub-regulation (2) for which —

(a) the experience and qualifications of the individual shall be the dominant factors;

(b) no support from a home office is needed for the

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individual consultant; and

(c) teamwork or a multidisciplinary approach is not necessary.

(2) The contracts referred to in sub-regulation (2) are contracts related to —

(a) advisory services assignments; or

(b) technical opinions on specific matters, for which specialist individual knowledge is the most outstanding issue.

(3) For the purpose of procuring the services of an individual consultant, the procuring entity shall —

(a) prepare terms of reference for the assignment, including the scope of work and its estimated budget;

(b) request expressions of interest from suitable consultants, or advertise the contract opportunity, if necessary, requesting suitable consultants to submit their curriculum vitae;

(c) conduct an evaluation of the individual consultants who submit expressions of interest in respect of the assignment on the basis of their —

(i) academic qualification,

(ii) experience, and

(iii) knowledge of domestic conditions, where necessary;

and

(d) select the successful consultant on the basis of the comparison of the qualification of that consultant with the qualifications of the other consultants.

Changes in terms of reference and other details

26. (1) The term of reference for a consultant may not be changed substantially.

(2) The negotiations respecting —

(a) any technical proposal shall cover minor aspects only; and

(b) any financial proposal shall not include any aspect respecting the rates of remuneration.

(3) Notwithstanding subregulation (2), negotiations respecting a financial proposal may, for purposes of compatibility with the work-plan and clarification of any tax liability, include minor re-arrangements of activities and staff.

*Public Procurement Regulations***Award of contract after previous consultancy contract**

27. An architect or engineer who executes a contract for consultancy services, such as a feasibility study or design services in relation to an early phase of a project is ineligible —

- (a) to make or participate in an invitation to pre-qualify;
- (b) to submit a proposal; or
- (c) to be awarded a contract for the execution of any works in respect of any consultancy services related to the prior consultancy services which were rendered.

Goods, Works and Services**Restricted Tendering**

28. 1. When using restricted tendering a procuring entity shall indicate the ground for imposing the restriction.

2. The ground provided shall be in accordance with 58(1) and shall include the specific circumstances which qualifies

3. The ground for restriction shall be in writing and submitted to the relevant authority for approval pursuant to section 42 of the Act

4. A copy of the approval shall be placed on the procurement file

List of Suppliers

29. 1. When selecting suppliers from the list of suppliers for a restricted tendering procedure, procuring entities may consider only the technical capacity of the listed bidders to fulfil the specific technical qualification requirements of the contract in question.

2. Pursuant to section 57(A) of the Act where an electronic procurement system is used, supplier registration can be facilitated via the electronic procurement system. The system shall ensure that all the conditions listed in 57A are adhered to.

Direct Public Procurement

30. 1. In accordance with Subject to directions issued by the Minister, a procuring entity desirous of using direct public procurement under s. 52 of the Act shall prepare and submit to

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the relevant authority, a request for procurement via direct public procurement. in accordance with any directions given by the Minister

2. The request shall provide the following details-

a) The grounds, as in 52(1), why the procurement cannot be done competitively

b) The availability of financing in estimate

c) The maximum expected value of the procurement

d) The justification for the vendor selected

e) Detailed description of goods, work or services required.

3. Upon receipt of approval for Direct Public Procurement, the procuring entity shall forward the relevant standard tender document to the selected vendor. The vendor is required to make a submission to the relevant authority to allow for evaluation and award to facilitate a contract agreement being prepared.

4. A copy of the request for approval, approval granted, standard document used and contract award shall be placed on the procurement file

Emergency Public Procurement

31. 1. Subject to directions issued by the Minister, a Procuring entity desirous of using the emergency procurement under s. 53 of the Act shall submit a written request to the relevant authority detailing the following:

i. The nature of the emergency

ii. Details of the goods and services required

iii. The total expected value of the procurements to be undertaken

2. A written report shall be submitted to the Minister detailing all procurements executed as part of the emergency response.

Framework agreements

32. The Director may provide guidance on the preparation and processing of the contract documents in the case of every framework

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agreements.

MINOR VALUE PROCUREMENTS

Quotations for minor value procurements

33. (1) Pursuant to section 54 of the Act, a minor value procurement —

may be made by sealed quotation

(a) if the estimated value of the procurement contract is of a minor value; and the requirement is not of a complex nature

(b) shall be made by request for sealed quotations, unless the procurement is made as an emergency procurement or using a purchase order.

(2) Notwithstanding subregulation (1), where —

(a) a procuring entity procures any goods, services or works as routine and continuous supplies; and

(b) in any financial year, the estimated aggregate value of such goods, services or works does not exceed twenty thousand dollars (\$20,000), or other amount prescribed, the procuring entity may procure such goods, services or works, directly using a purchase order without competition, after satisfying itself that the goods, services or works are of satisfactory quality and the prices are fair and reasonable.

Requests for sealed quotations

34. (1) The procuring entity shall, before it commences any minor value procurement by competitive quotations, ensure that an accurate estimated value of the procurement contract is prepared.

(3) In accordance with section 42 of the Act for all minor value procurement —

(a) the procurement unit shall document the justification for the selection of the procurement procedure; and

(b) the procurement unit shall —

(i) in writing give justification for the procurement procedure which is considered practicable in the circumstances, and

(ii) cause a copy of the request for approval, the approval, the request for quotations, award and any other documentation generated as part of the procurement to be placed in the procurement document file.

(4) The Procuring entity shall ensure that reasonable notice

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of a written request for quotations is given before the deadline for the submission of quotations specified in the written request for quotations.

(6) A request for quotations shall include, without limitation —

- (a) a schedule of requirements;
- (b) a description of what is to be procured;
- (c) in the case of a small procurement of works or services, the contractual terms and conditions applicable to the procurement;
- (d) in the case of a small procurement of goods, any necessary contractual terms and conditions not implied by law;
- (e) information respecting —
 - (i) the place where, the person to whom and the manner in which the quotation is to be submitted, and
 - (ii) the deadline for the submission of quotations; and
- (f) instructions to tenderers, which shall include, without limitation—
 - (i) a statement to the effect that the award of contract will be made to the person who submits the lowest evaluated substantially responsive quotation,
 - (ii) a statement to the effect that the procuring entity is not bound to accept the lowest or any quotation submitted, and
 - (iii) the name, telephone and fax number and e-mail address of the officer of the procuring entity who can be contacted in relation to the procurement.

COMPETITIVE TENDERING

Tender Procedures

Tender securities

35. (1) Pursuant to section 70 of the Act, subject to this regulation, the procuring entity shall, in relation to any procurement, determine whether —

(b) a tender security or tender securing declaration is required and, if so, the amount of the security required.

(2) The procuring entity, in determining whether a tender security or a tender securing declaration is required, shall consider that a prospective tenderer is likely to neglect or refuse —

- (a) to provide the required performance security within the time

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stipulated in the invitation for tenders

(b) to execute a written contract when required by the Act or under these Regulations .

(4) Subject to subregulation (5), an invitation for tenders for works may be accompanied by —

(a) a tender security in an amount not more than five per cent of the tender

(5) The tender security or performance security shall be —

(a) a bank letter of guarantee in the form approved by the Director;

(b) a bank draft;

(c) a certified cheque; or

(d) such other financial instrument in the form approved by the Director.

Qualification of Tenderers

36. (2) The procuring entity may require the tenderers to furnish evidence of their financial capacity to fulfil the requirements of the contract. The procuring entity shall set out the level of financial capacity required from the tenderers in the tender document. Such evidence may be furnished by:

(a) Certified statements from bankers including, if necessary, details of available line of credits;

(b) Presentation of the bidder's balance sheet or extracts from the balance sheets for the last three years; and

(a) Overall turnover and the turnover in respect with civil works, supply of goods or services similar to those required in the contract for the three previous years.

(3) The procuring entity shall indicate the references it requires in the tender document.

(4) Depending on the nature, quantity and purposes of the goods, services or works, evidence of technical ability may be furnished by means of:

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(a) The professional and educational qualifications of the bidder and/or its managerial and supervisory staff and, in particular, of persons responsible for carrying out the particular works or services for the proposed contract;

(b) In the case of works: A list of works carried out over the last 3 years, together with certificates of satisfactory execution for similar works, issued by previous clients. Such certificates will indicate the value, date and site of the works and shall specify whether they were properly executed.

(c) In the case of goods and services: A list of supplied goods and services in the past 3 years with the sums, dates and purchasers (public and private). Such list is to be evidenced by certificates issued or signed by the purchaser.

(d) A list of the bidder's machinery, namely tools, plants and technical equipment, including quality control system directly carried out or by sub-contracting.

(e) In the case of goods: Detailed descriptions and/or types of goods to be supplied, which, if the procuring entity so requires, authenticity must be certified.

(f) In the case of goods incorporated into works: Certificates drawn up by official quality control institutes or agencies of recognized competence attesting conformity to specifications or standards for products. The procuring entity shall state in the bidding documents the references required.

(4) Where a procuring entity performs pre-qualification proceedings, the procuring entity shall —

(a) specify, in the standard pre-qualification documents, the criteria against which applications to pre-qualify are to be considered and determined;

(b) supply a set of pre-qualification documents to every supplier, contractor or consultant requesting such documents; and

(c) apply the criteria specified in the pre-qualification documents in considering and determining which suppliers, contractors

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or consultants are pre-qualified.

(d) Such criteria shall be limited to those referred to in this regulation.

(6) A procuring entity —

(a) may require a supplier, contractor or consultant to pay a fee for the supply of the pre-qualification documents, but such fee shall not exceed the costs of printing and providing the documents;

(b) shall respond, without delay, to any request for clarification of the pre-qualification documents made by a supplier, contractor or consultant who has submitted an application before the specified deadline for submission of applications;

(c) may require a supplier, contractor or consultant who has been pre-qualified to provide updated information in relation to its qualifications ;

(e) shall disqualify any supplier, contractor or consultant who fails to provide updated information in relation to its qualification

(d) shall, without delay, notify each supplier, contractor or consultant requested to provide updated information as in 6(c) on, whether or not the supplier, contractor or consultant is successfully prequalified; and

(8) After the completion of qualification proceedings, the procuring entity shall, without delay and simultaneously, furnish the Relevant authority and each applicant a list containing the names of the suppliers, contractors or consultants which have been qualified.

Eligibility of Tenderer

37. (2) The procuring entity may require a person to provide evidence or information to establish that the criteria under section 62(1) of the act are satisfied.

(3) The criteria under section 62(1) of the act and shall be set out in the tender document or the request for proposals or quotations or, if a procedure is used to pre-qualify persons, in the documents used in that procedure.

(4) Where a procuring entity intends to determine whether a person is qualified, the procuring entity shall make the

determination using the criteria and requirements set out in the documents or requests described in subsection (3).

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(5) The procuring entity may disqualify a person for submitting false, inaccurate or incomplete information about his qualifications.

Disqualification of suppliers

38. (1) A contractor, supplier or service provider who —

(a) fails to meet the standards or satisfy the eligibility requirements to participate in the procurement proceedings respecting a procurement of goods, services or works under the Act and the Regulations is disqualified from participating in the procurement proceedings; or

(b) is suspended under the Act or these Regulations is disqualified from participating in procurement proceedings during the period of suspension.

Preparation of tenders

39. (1) A tenderer —

(a) may prepare tenders, and applications to pre-qualify in respect of any procurement of goods, services or works —

(i) subject to sub-paragraph (ii), using the appropriate standard tendering documents supplied in accordance with regulation 15, or

(ii) when so directed by the procuring entity, in writing;

(b) shall, subject to sub-regulation (2) sign tenders, and applications to pre-qualify in respect of any procurement of goods, services or works; and

(c) shall enclose the tender, and application to pre-qualify in respect of any procurement of goods, services or works in a sealed envelope addressed to the procuring entity in accordance with this Division.

(2) Where the tenderer, is a company, partnership or business firm, the tenderer, shall cause the tenders, and applications to pre-qualify in respect of any procurement of goods, services or works to be signed by a duly authorised officer or employee of the tenderer.

Submission of tenders

40. (1) Pursuant to section 67 of the Act every tenderer responding

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to an invitation to tender shall submit a tender which —

- (a) is written in the English language;
- (b) is in a sealed envelope bearing the address specified in the tendering documents;
- (c) is signed by a duly authorized officer; and
- (d) complies with any other format specified in the tender document.

(3) The procuring entity shall —

- (b) issue to the tenderer a receipt showing the date and time of submission of the tender.

Modification or withdrawal of tender or application to prequalify

41. (1) Pursuant to section 69 of the Act, and subject to this regulation, any tenderer, or applicant for pre-qualification may amend or withdraw a tender, or an application, as the case may be, by submitting a notice of amendment or withdrawal to the procurement officer of the procuring entity not later than the deadline for submission of tenders, or applications.

Clarification and modification by a procuring entity.

42. (1) Pursuant to section 65(3) of the Act and the instructions of the relevant procuring entity, the procuring entity may, before the deadline for the submission of tenders or applications to prequalify, amend an invitation for tenders or an invitation to prequalify —

(a) by issuing an addendum, in writing, for that purpose and setting out in the addendum the nature and extent of the amendment; and

(b) by giving a copy of the addendum to each person to whom the invitation for tenders, request for proposals or invitation to prequalify was issued.

(2) Each addendum issued under this regulation shall —

(a) be numbered consecutively in ascending order commencing with the number “1”; and

(b) identify the tender document, to which is amended by the general description of what is to be procured and the number of the procurement.

(3) A copy of an addendum is deemed transmitted to a person to whom the invitation for tenders, or invitation to prequalify was issued if the copy of the addendum is sent —

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(a) to any address information furnished to and recorded by the procuring entity;

(b) in such other manner as the person and the procuring entity may agree.

(4) Where the procuring entity and a person agree to the giving of an addendum in accordance with sub-regulation

(3) (b), the procuring entity shall—

(a) make a written record of the agreement; and

(b) give a copy of the agreement to the other party to the agreement.

Entitlement to attend opening session

43. (1) Every tenderer or his representative shall be authorised to attend the tender opening.

(5) The relevant authority shall not, at the tender opening session make, communicate, disclose or announce any decision regarding the disqualification or rejection of a tender.

Examination of tenders

44. (1) A tender evaluating committee shall, without delay, examine—

(a) every tender or every application for pre-qualification which is opened to determine whether the tenderer is eligible

(d) a tenderer refuses to accept a correction made under paragraph (b) or (c) or regulation 49(3)(c) —

(i) the procuring entity shall reject the tender

Clarification of Tenders

45. To assist in the examination, evaluation, comparison of tenders, and qualification of tenderers, the tender evaluation committee may, request clarification from any tenderer. Any clarification submitted by a tenderer in respect to its tender that is not in response to a request by the tender evaluation committee shall not be considered. The request for clarification and the response shall be in writing. No change, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered in the Evaluation of the tenders.

If a Tenderer does not provide clarifications of its tender by the

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date and time set in the request for clarification, its tender may be rejected.

During the evaluation of tenders, the following definitions apply:

(a) “Deviation” is a departure from the requirements specified in the Tendering Documents;

(b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Tender document; and

(c) “Omission” is the failure to submit part or all of the information or documentation required in the Tender document

Responsiveness of Tenders

46. The determination of a tender’s responsiveness shall be based on the contents of the tender itself.

A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

(a) if accepted, would

(i) affect in any substantial way the scope, quality, or performance of the Goods Works or Services specified in the Contract; or

(ii) limit in any substantial way, inconsistent with the Tender document, the Procuring entities rights or the Tenderer’s obligations under the Contract; or

(b) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive tenders.

The tender evaluation committee shall examine the technical aspects of the tender submitted in accordance with required specifications detailed in the tender document, to confirm that all requirements have been met without any material deviation or reservation, or omission.

If a tender is not substantially responsive to the requirements of Tender document, it shall be rejected by the tender evaluation committee and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

Errors and Omissions

47. Provided that a Tender is substantially responsive, the tender evaluation committee may waive any errors or omissions in the Tender

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(as follows?).

Provided that a tender is substantially responsive, the tender evaluation committee may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial errors or omissions in the tender related to documentation requirements. Such errors or omission shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.

Provided that a tender is substantially responsive, the tender evaluation committee shall rectify quantifiable nonmaterial errors or omissions related to the Tender Price. The Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or erroneously stated item by adding the average price of the item or component quoted by substantially responsive Tenderers. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the tender evaluation committee shall use its best estimate.

Arithmetical Errors

48. Provided that the Tender is substantially responsive, the tender evaluation committee shall correct arithmetical errors on the following basis:

(a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;

(b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

Tenderers shall be requested to accept correction of arithmetical errors. Failure to accept correction shall result in the rejection of the Tender.

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Evaluation criteria

49. Every procuring entity shall specify, in detail, in the tendering documents—

- (a) the criteria to be considered for the purposes of tender evaluation;
- (b) the weighting assigned to each criterion; and
- (c) the manner in which each criterion shall be applied.

Rejection of tenders

50. (1) An evaluating committee shall ensure that a tenderer responding to an invitation to tender submits the tender by or before the deadline for the submission of tenders; and

- (2) The evaluating committee shall reject —
 - (a) every tender received after the deadline for the submission of tenders;
 - (b) any tender showing a major deviation with respect to the factors set out in subsection (3); and
 - (c) the tender of any supplier or contractor who does not accept the correction of a minor deviation in that tender.

(3) The following shall be considered as major deviations in a tender —

- (a) with respect to the clauses in an offer —
 - (i) unacceptable sub-contracting, alternative design and price adjustment, and
 - (ii) where time is of essence, unacceptable time line;
- (b) with respect to the status of the tenderer, a tenderer who is ineligible, uninvited or not pre-qualified;
- (c) with respect to tender document, an unsigned tender;

and

- (d) with respect to time, date and location for submission of tenders —
 - (i) a tender received after the date and time for submission of tenders as stipulated in the tendering documents, and
 - (ii) a tender submitted at the wrong location.

(4) Where a tender is received which shows a major deviation, the evaluating committee —

- (a) shall not consider the tender any further, if the tender has been opened; and

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(b) shall remain unopened, if the tender is received unopened.

Return of tender securities

51. Where —

(a) a successful tenderer complies with the requirements respecting the execution of a contract and provision of a performance security, the procuring entity shall, without delay, return the tender securities to the unsuccessful tenderers; or

(b) a procuring entity notifies the tenderers of its rejection of all tenders, the procuring entity shall, without delay, return the tender securities to the tenderers.

Unopened Tenders

52. Tenders received late shall not be opened. Tenderers may arrange with the procuring entity to collect their unopened submissions

*AWARD OF PROCUREMENT CONTRACTS***Award of procurement contracts**

53. (1) Pursuant to section 76 of the Act, subject to this regulation and regulations 49 and 54, a relevant authority may —

(a) after considering the report referred to in 73(9) of the Act and

(b) if it is satisfied that sufficient funds are available, approve the award a contract to the tenderer who submits, on the basis of the evaluation criteria specified in the invitation to tender, the lowest evaluated substantially responsive tender.

(2) Where an invitation for tenders provides for the subdivision of any procurement into lots, the procuring entity may make more than one award of contract in respect of an invitation for tenders.

Performance securities

54. Pursuant to section 76(5) of the Act, the procuring entity shall in relation to any procurement contract determine whether a performance security is required and the amount of the performance security.

The procuring entity, in determining whether a performance security is required, shall consider the risk of default by a successful

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tenderer

A performance security when required shall not exceed an amount of ten percent of the value of the public procurement contract.

A performance security shall be -

(a) a bank letter of guarantee in the form approved by the Director;

(b) a bank draft;

(c) a certified cheque; or

(d) such other financial instrument in the form approved by the Director

Negotiation with lowest tenderer

55. Negotiations shall only occur where the lowest evaluated substantially responsive tender exceeds the procuring entity's cost estimate.

Prior to any negotiation, the procuring entity shall review the causes of possible deficiencies in its estimate.

Where there are no deficiencies in the estimates, the procuring entities may consider inviting new tenders.

Alternately, the procuring entity may negotiate with the lowest evaluated tenderer in an attempt to obtain a satisfactory contract through a reduction in the scope and or reallocation of risk and responsibility which can be reflected in a reduction of the contract price.

A substantial reduction in the scope or modification of the contract documents would warrant re-bidding

Prior to commencing any negotiations the procuring entity must first seek the approval of the board, procurement committee or the accounting officer based on the estimated contract value.

Notice to unsuccessful tenderers

56. (4) The procuring entity shall —

(b) in writing, simultaneously notify the successful tenderer and unsuccessful tenderers of the selection of the tender for the award of the procurement contract; and

(c) specify, in the notice, the name and address of the successful tenderer and the price of the procurement contract.

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Lots

57. Where a procuring entity intends to sub-divide any procurement into lots, the procuring entity shall take into account the following —

(a) the economic aspect of the procurement, that is to say, whether the subdivision would restrict competition;

(b) the technical aspect of the procurement, that is to say, the risks to render the execution of the contract technically difficult or expensive; and

(c) the performance aspect of the procurement, that is to say, the capacity of the procuring entity to ensure co-ordination of the performance of the contract.

Rejection of all tenders

58. Where a procuring entity rejects all tenders, the procuring entity shall —

(a) without delay, notify in writing all tenderers of the determination of the procuring entity and the reasons for the determination; and

(b) place a copy of the minutes of the meeting of the procuring entity respecting the rejection of all tenders in the procurement document file.

Cancellation of procurement proceedings

59. (1) Where the procuring entity intends to publish anew the invitation to tender for the procurement of goods, services or works—

(a) the procurement unit shall examine the reason for the rejection of the tenders or the cancellation of the procurement proceedings; and

(b) the procuring entity shall modify the technical specifications or contract conditions as required.

(5) Where a procuring entity—

(a) rejects all tenders at any time before the acceptance of a tender; or

(b) cancel the procurement proceedings in the public interest, the procuring entity shall not incur any liability to the tenderers.

(6) Notwithstanding subsection (5), where the procuring

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entity—

(a) cancels any procurement proceedings, Accounting Officer may order a refund of the cost incurred by any tenderer respecting the preparation and submission of the tender; or

(b) by reason of a cancellation of any procurement proceedings, publishes anew an invitation for tenders or request for proposals, the Board may direct that a tenderer affected by the cancellation is furnished with the new tendering documents or request for proposals without charge, if the Board is of the opinion that the refund or, as the case may be, the receipt of such documents or request without charge is in the public interest.

(7) Where a procuring entity determines not to proceed with any procurement of goods, services or works, the procuring entity shall —

(a) without delay, notify in writing each pre-qualified applicant of its determination and the reason for its determination; and

(b) ensure that the procurement officer of the procuring entity places a copy of the record in the procurement document file.

Record of procurement proceedings

60. (1) Every procuring entity shall —

(a) keep and maintain a record of the comprehensive procurement proceedings, that is to say, adequate contract documentation for all phases of the procurement process including planning, tendering, award, contract management, modifications, schedules of payment, progress reports and contract evaluations;

(b) upon request, make available for inspection by anyone authorized under the Act records and documents respecting procurements maintained by the procuring entity; and

(2) Where donor funds have been used for the procurement of goods, services or works, the officials of the donor shall, upon request, have access to the procurement files for the purpose of audit and review.

Contents of Procurement Records

61. (1) Every procuring entity shall keep appropriate information in respect of each procurement contract which shall be sufficient to permit the procuring entity, at a later date, to provide documentary evidence of all decisions taken in connection with —

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- (a) the qualification and selection of contractors, suppliers or service providers;
- (b) the award of contracts; or
- (c) the use of any restricted tendering procedure, without competition.

(3) For greater clarity, notwithstanding 81(4) of the Act, the records of every procurement must include —

(c) if, as part of the procurement process anything was advertised in a newspaper or publication, a copy of that advertisement as it appeared in the newspaper or publication;

(d) for each tender, proposal or quotation submitted —

(i) the name and address of the tenderers participating,

(ii) the price or the basis for determining the price, and

(iii) a summary of the principal terms and conditions of the tender, proposal or quotation;

(e) a summary of the evaluation criteria used and the result of the evaluation and comparison of the tenders, proposals or quotations;

(f) where the procurement proceedings were terminated without resulting in a contract, an explanation respecting the termination;

(g) a copy of every document required to be prepared and supplied by the procuring entity under the Act and these Regulations; and

(h) such other information or documents as may be required in accordance with requests under the Act.

(6) A person shall not disclose any information under subregulation (4), if the disclosure of the information is contrary to section 90(1)(h) of the Act, but a disclosure of any information referred to in subregulation (3) shall be deemed not to be contrary to that section.

(7) A procuring entity shall maintain a proper filing system with clear links between the procurement and expenditure files.

Procurement Reference Numbers

62. The procuring entity shall —

(a) number each procurement for each financial year —

(i) in the chronological order of the procurement, and

(ii) in ascending number commencing with the number

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“1”; and

(b) organise each annual series in such a manner so as to distinguish between —

- (i) procurements performed by invitations for tenders, procurements performed by request for quotations
- (ii) procurements performed by requests for proposals,
- (iii) invitations to pre-qualify,
- (iv) framework agreements;
- (v) exempt procurements
 - (vi) emergency procurements,
 - (viii) direct public procurements.

Failed Public Procurement Procedure

63. (1) Pursuant to section 83 of the Act, tender document shall provide that the procuring entity may reject all tenders when there is:

- i. lack of effective competition,
- ii. tenders are not substantially responsive,
- iii. no tender meets the specified qualification criteria,
- iv. the price of the lowest evaluated tender is substantially higher than the updated estimated cost or available budget for the procurement.

(2) Lack of competition shall not be determined solely on the basis of the number of Tenders. Even when only one tender is submitted, the process may be considered valid, if advertising was satisfactory, the qualification criteria were not unduly restrictive, and prices are reasonable in comparison to market values. If all tenders are rejected, the procuring entity shall review the causes justifying the rejection and make appropriate the revision of qualification criteria may be justified only when they were set too stringently.

(3) If for justified reasons, re-advertisement is not practical or the rejection is due to all of the tenders being nonresponsive, new tenders may be invited, from the initially prequalified firms, or, in the absence of prequalification, from all firms who obtained the initial

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tender document.

(4) Tenders shall not be rejected and new ones invited on the same bidding and contract documents solely for the purpose of obtaining lower prices. If the lowest evaluated responsive bid exceeds the Borrower's updated cost estimates by a substantial margin, the Borrower shall investigate causes for the excessive cost and consider requesting new bids as described in the previous paragraphs. However, substantial reduction in the scope or modification to the contract documents may require rebidding.

REVIEWS IN RESPECT OF CONTRACT AWARDS

Public Procurement Review

64. 1. In conducting the review under section 84 of the Act, the Director shall act on the basis of a recommendation from an independent expert in accordance with the procedure established in Schedule 1.

2. Under section 84(2), no application for review may be lodged before the tenderer has exhausted its right to complain to the procuring entity under section 83A of the Act. In particular,

(a) the tenderer shall make a **complaint** regarding an alleged breach of the Act or these Regulations as soon as the grounds for the complaint arose and in any event within 7 days of the date of the notice of intention to award a contract under section 76(3) of the Act;

(b) the procuring entity shall, within 7 days of the receipt of the complaint, provide a reasoned opinion in writing either dismissing or accepting the complaint in accordance with section 83B (3) of the Act;

(c) in the absence of a decision under sub-paragraph (b) or where the tenderer disagrees with the decision, the tenderer may apply for review in accordance with section 84 of the Act;

(d) once a complaint has been lodged, the time period set out in section 76(4) of the Act shall be suspended until such time as the

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compliant has been resolved, including any time required to conduct a review pursuant to section 84 of the Act.

3. The fee referred to in section 84(5) of the Act shall be ECD 300.

**PART 3
PROCUREMENT CONTRACTS**

General conditions of contracts

65. (1) A procuring entity shall use the standard general conditions of contracts in the tendering documents.

(2) A procuring entity shall not make any change to the general conditions of contract, but can make a request to the director for corrections and upgrading to the general conditions.

Renewal and extension of contract

66. A procuring entity may renew or extend a contract if —

(a) the conditions of renewal or extension are specified in the terms of the contract; and

(b) funds are available for the renewal

**PART 4
TRANSPARENCY AND ACCOUNTABILITY**

Duty to declare interest

67. (1) Where an officer of a procuring entity has knowledge or has reason to believe that he is exposed to or has been exposed to a conflict-of-interest situation respecting a procurement contract, the officer shall —

(a) immediately declare such exposure to the head of the procuring entity, the chairperson of the public procurement committee or the chairman of the Board; and

(b) refrain from taking part in the decision-making process or being on the tender evaluation committee of the respective procurement.

Conflicts of interest

68. (1) Where a member of the permanent staff, or an associate, of a consulting firm is available as an individual consultant, the conflict of interest provisions in the Act, these Regulations and other relevant

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enactments shall not apply to the individual consultant.

(2) A prospective consultant is ineligible to participate in procurement opportunities under the Act and these Regulations if there have been —

(a) downstream procurement of goods and works, related to the work of the consultant, such as the consultant attempting or being perceived to influence the decisions of the procuring entity for his own benefit or that of his affiliates by specifying, designing, or suggesting that works or equipment be obtained from such affiliates;

(b) downstream provision of consultancy services related to —

(i) the procurement of works by an affiliate of the consultant;

(ii) the supply of equipment by an affiliate of the consultant;

and

(iii) the installation of equipment referred to in sub-paragraph (ii) by an affiliate of the consultant;

(c) downstream conflicting activities closely related to the consultant's work while in a consulting capacity on the same transaction such as an investment bank, in a consulting capacity, supplying funds to a procuring entity in a sale transaction after advising a seller;

(d) conflicting downstream assignments where the incumbent consultant deprives his client of the full benefits of competition by creating conditions under which the consultant attains or, is perceived to attain, an undue advantage over other consultants who may apply for consideration in such downstream assignments; or

(e) conflicting assignments which by their nature cause, or are likely to cause, the consultant to bias his advice to be consistent with findings of the assignments or that of his affiliates.

Tendering by statutory bodies prohibited

69. A statutory body on the basis of its inherent association with the government, is ineligible to respond to an invitation for tenders or request for proposals under the Act or these Regulations.

Notwithstanding, where financial and administrative independence can be shown, a statutory body can be permitted to participate in a procurement opportunity.

Public access and transparency

70. (1) Where a procuring entity awards a procurement contract, the procuring entity shall, as soon as practicable after the award

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of the procurement contract, publish a notification of the award of procurement contract.

(4) a procuring entity shall disclose records of the procurement proceedings, whether before or after the award of procurement contract, if a court of competent jurisdiction makes an order directing the disclosure.

Publication of awards

71. For purposes of this Part, the Director shall publish a quarterly notice of award of contracts —

(a) in the *Gazette*;

(b) where applicable, the Government electronic procurement system or the website of the Ministry of Finance; or

(c) by such other means as considered appropriate including the posting of the notice in a conspicuous location at the Ministry of Finance or office of government.

PART 5
MISCELLANEOUS

Availability of Public Procurement Manual and procurement policy

72.—(1) Subject to subsection (2), the Director shall make the Public Procurement Manual and the procurement policy of the Government available on the electronic procurement system of the Government or on the website of the Government of Saint Lucia.

(2) Where an electronic procurement system or a website of the Government is not operational, the Director shall, make up-to-date copies of the Public Procurement Manual available to procuring entities and to members of the public.

Ineligibility / Disqualification of tenderer

(2) A person is ineligible to submit a tender, a proposal or an application in response to an invitation for tenders or to prequalify, request for proposals or to be awarded a contract for procurement of goods services or works if —

(a) the person is suspended or otherwise disqualified under the Act or these Regulations;

(b) the submission or award is unlawful under the laws of

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Saint Lucia;

- (c) it is unlawful for the person to make an application to prequalify or the submission under the laws of Saint Lucia; or
- (d) it is unlawful for the person to enter into a contract under the laws of Saint Lucia.

Application of similar procedures? [mutatis mutandis]

(3) When a matter or procedure is not provided for, or insufficiently provided for, under these Regulations, the matter or procedure shall be determined —

- (a) subject to paragraph (b), by analogy with any matter or procedure which bears the greatest similarity; or
- (b) in accordance with the procedures set out in the Public Procurement Manual.

**SCHEDULE 1
REVIEW PROCEDURE**

1 Procedure for Review

(1) An application for review shall be made in writing and addressed to the Director and in the manner prescribed in section 5, setting out —

(a) the grounds of the challenge; and

(b) whether the procuring entity has notified the bidder of any steps it has or proposes to take to rectify the breach alleged in the complaint, and if it has done so, the reasons why the bidder is dissatisfied with them.

(2) Within 5 days after receiving an application under section 84(1) of the Act, the Director shall register the review procedure in accordance with section 7.

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(3) The making of an application to the Director in terms of subsection (1), within the five-day period specified in that subsection, shall suspend the challenged procurement proceedings until the Independent Expert—

(a) makes its final recommendation to the Director; or

(b) upon hearing the parties, decides to recommend to the Director the cancellation of the suspension on the grounds that it is satisfied that urgent public interest considerations require the procurement to proceed.

(4) The decision of the Director following the recommendation of the Independent Expert shall be binding on the bidder that lodged the application and the procuring entity whose tender procedure is the subject of the review.

(5) The Director shall dismiss the application where—

(a) the grounds for review do not constitute a valid basis for the review; or

(b) the bidder that lodged the application has failed to establish the grounds for review.

(6) Where the Independent Expert finds that a bidder that lodged an application for review has established valid grounds for the review, it may, as appropriate, recommend to the Director the application of the remedies of Article 84(9) of the Act.

(7) The decision of the Independent Expert is subject to judicial review only on a question of law.

2 Duties of the Independent Expert

(1) Once appointed, the Independent Expert shall conduct the review independently and impartially in accordance with the Procedure and shall, in all respects relating to his or her status and ethical standards, be bound by the rules applicable to public servants.

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(2) An Independent Expert who has a direct or indirect personal interest in a matter being considered or to be considered shall, as soon as reasonably practicable after the relevant facts concerning the matter have come to his or her knowledge, disclose the nature of his or her interest to the Director which shall appoint an alternative independent expert.

(3) The obligation of sub-section (2) is a continuing obligation on the Independent Expert appointed. He or she is required to disclose immediately to the Director their interest as soon as such interest arises.

3 Secretariat

(1) The Director shall provide the Secretariat of the Independent Expert and shall be responsible for the organisation and management of review procedures.

(2) The business of the Independent Expert and all clerical matters arising out of the conduct of a review under this procedure shall be carried out by the Secretariat. In particular, all applications, replies and subsequent communications shall be addressed to the Independent Expert at the Secretariat unless otherwise specified.

(3) Copies of all relevant forms to be used for the review procedure shall be available for collection at the office of the Secretariat and a copy of such forms shall be sent to all interested parties upon request.

(4) Following the receipt of an application for review, the Secretariat shall prepare and provide to the Independent Expert the case file and the terms of reference in the form provided for in the Secretariat's Manual of Procedures.

4 Representation

A party may appear in person or may be represented by a lawyer or such other person as shall be recognized by the Independent Expert

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as suitable for the purposes of such representation.

5 Submission of Application for Review

(1) Any bidder wishing to submit an Application for Review shall submit the following documents to the Secretariat at the office of the Director:

(a) a completed Review Application in the Form provided for by the Secretariat;

(b) copies of any documentary evidence relied upon in support of the claim set out in the Review Application Form;

(c) where the request is made by an agent of the Applicant, an appropriate power of attorney.

(2) The Secretariat shall record receipt of the Application in the Review Register and assign it a Case Reference Number.

(3) The Secretariat shall immediately verify that the Application for Review is in conformity with the provisions of sections 1(1) and 5(1).

(4) Any Application for Review found not to be in conformity with the above shall be rejected and returned to the Applicant together with a statement of the reasons for rejection. The Applicant may then re-submit its corrected Application for Review.

(5) Upon recording receipt, the Secretariat shall immediately notify the procuring entity against whom the Application has been made (the Respondent) of the Application for Review and include with the notice a complete copy of the Application. Such notification shall ordinarily take place at the latest the day following the submission of the Application.

6 Submission of Reply

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(1) Within 3 days of the receipt of the notification from the Secretariat, the Respondent shall submit to the Secretariat a Reply containing the following documents:

(a) a written Reply to the Application for Review in the Form provided by the Secretariat;

(b) copies of any documentary evidence relied upon in support of the Reply;

(c) where the Reply is made by an agent of the Respondent, an appropriate power of attorney.

(2) The failure to submit a Reply within the specified period will not prevent the conduct of the review procedure and the Respondent will remain bound by any decision of the Director.

(3) Where the Respondent fails to submit a Reply within the specified time limit, the Director may proceed with the formal assignment of the case to the Independent Expert .

(4) The Independent Expert shall, if he or she is satisfied that the Application for Review was duly served on the Respondent and the party has failed to serve a Reply without good cause, have power to proceed with its deliberations on the basis of the evidence before it as if such proceedings had been conducted in the presence of all parties.

7 Registration

(1) Following receipt of the Reply, the Secretariat shall collate all the relevant documents into a single case file, including the Application for Review, the Reply, the documentary evidence provided by the parties and the powers of attorney, if any.

(2) The Director shall formally assign the case to the Independent Expert and the secretariat will provide the Independent with a copy of the case file.

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(3) Following confirmation of assignment of the case to the Independent Expert and receipt by the Director of the procedural instruction for the review from the Independent Expert, the Secretariat shall register the commencement of the review procedure in the Review Register as the 'date of commencement'.

(4) The Secretariat shall immediately notify the parties of the date of commencement and provide them with a copy of the case file and the procedural instructions for the review.

(5) The Secretariat shall simultaneously notify the suppliers, contractors, service providers and any governmental authority whose interests are affected or are likely to be affected by the review in accordance with Article 82(3) of the Law.

8 Opening of Review Procedure

(1) The Independent Expert shall, taking into account the nature of the case defined in the terms of reference, determine the order, time and place of any Hearing he or she intends to hold.

(2) At the request of the parties, the Independent Expert may proceed to make a recommendation in the absence of a Hearing. In such a case, the Independent Expert, if satisfied that it can reach a definitive opinion on the basis of the terms of reference and without hearing the parties, may proceed to reach a recommendation without a Hearing.

(3) In determining the order and time of the Hearing, the Independent Expert shall give sufficient consideration to preventing the delay of the proceedings.

(4) The Secretariat shall communicate this decision to the parties in the form provided for in the Manual of Procedures.

9 Hearing

(1) The Hearing shall take place in the manner provided

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for by the Independent Expert.

(2) If one of the parties, despite having received notice of the Hearing, fails to appear, the Independent Expert, if satisfied that the notification was received and the party is absent without good cause, shall have power to proceed with the proceedings which shall be deemed to have been conducted in the presence of all parties.

(3) The Hearing shall be closed to the public save that, with the consent of the Independent Expert, persons having a justifiable interest in the proceedings may be admitted.

(4) The Secretariat shall, for each Hearing, take and keep minutes or ensure that such are taken and kept stating the time, place and the names of those attending together with a summary record of the meeting or Hearing.

10 Evidence

(1) All relevant documentary evidence relied upon by the parties in support of their claims and replies shall be put before the Independent Expert in the form of copies of the Application for Review and Reply Forms provided for in the Manual of Procedures.

(2) Subsequent documentary evidence shall be admitted only where, in the opinion of the Independent Expert, it is relevant and only with the Independent Expert's consent.

(3) During the hearing, any party may submit oral evidence in support of its own contentions by way of the voluntary appearance of witnesses.

(4) The Independent Expert may, at its discretion, request the submission of further documentary evidence from the parties or request the presence of other witnesses or expert witnesses.

11 Conclusion of the Proceedings

(1) The Independent Expert shall, when satisfied that all

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